

RECEIVED

MAR 19 1992

Federal Communications Commission
Office of the Secretary

RECEIVED

MAR 19 1992

FCC MAIL BRANCH

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MM Docket No.92-10

In the Matter of)
Amendment of Section 73.202(b),)
Table of Allotments,) RM-7865
FM Broadcast Stations.)
(Sanibel and San Carlos)
Park, Florida))

To: Chief, Policy and Rules Division
Mass Media Bureau

COMMENTS OF SUNSHINE BROADCASTING, INC.

1. These Comments are filed by Sunshine Broadcasting, Inc. ("Sunshine") in response to the Notice of Proposed Rule Making released in the above-captioned proceeding on January 28, 1992. Sunshine is the licensee of WSUV, Fort Myers Villas, Florida.

2. The above referenced Notice of Proposed Rule Making proposes to modify the construction permit for Station WRWX(FM) to specify San Carlos Park, Florida, as its community of license and removing it from Sanibel, Florida, as its only local transmission service. The proposal is based on the contention of the permittee of WRWX(FM), Ruth Communications Corporation ("petitioner") that no sites are available from which WRWX(FM) can serve Sanibel.

3. Sunshine would like to point out that the Commission currently has 2 applications, Docket No.87-169, Punta Rassa, Florida, proposing transmitter locations that would provide a city grade signal over Sanibel. This raises a number of questions that the Commission should consider.

(1) Is the petitioner alleging that these transmitter sites are not actually available to the applicants in the Punta Rassa proceeding?

(2) If petitioner has proved to the Commission's satisfaction that these sites are not available, then has the Commission notified these applicants that the Commission does not accept their "reasonable assurance of availability" of their transmitter locations? Is the Commission going to dismiss the Punta Rassa applicants? Have you given them a chance to amend their applications?

(3) If petitioner has not proved that the Punta Rassa applicants' site is not available, then is there any real reason to alter the community of license for WRWX(FM)?

(4) While Sunshine recognizes that the standard of reasonable assurance of availability of a transmitter site does not require an applicant to have 100% assurance that their proposed site is actually usable, if Petitioner has proved with 100% assurance

that the Punta Rassa transmitter sites are not usable, shouldn't the Commission stop processing applications based on sites that are proven to be unavailable?

4. The Sanibel permittee's current site is 3 miles north of the south end of Pine Island. The permittee can move anywhere on Pine Island south of their present site without causing any short-spacing.* The Sanibel permittee has apparently proposed one site which was near an eagle's nest. The fact that this one site was opposed by the Florida Game and Fresh Water Commission hardly establishes that all sites in that three mile area will be opposed or that there are no sites available. The Sectional Aeronautical Chart for the area shows that there are currently two towers on Pine Island, including one 450 feet and one 503 feet. These towers are too far north to be used by petitioner, but they clearly establish that there are sites where towers are buildable on Pine Island; petitioner just has not chosen one.

* Attached is a spacing study based on the site of Petitioner's construction permit. All relevant stations are more than 12 km clear from the CP site except for Arcadia which is nearly due north of the Sanibel CP site. Therefore, moving south several miles will cause no short spacing.

The Arcadia short spacing noted on the spacing study is not a prohibited shortspacing as Arcadia proposed this site after the Sanibel CP was issued and Arcadia proposed a directional antenna under the new rules to eliminate any prohibited contour overlap.

5. The Sectional Aeronautical Chart also shows a 250 foot tower on Sanibel. The Notice of Proposed Rule Making contains no discussion of why the Sanibel permittee cannot locate on this or another existing tower, or build a tower of sufficient height to cover the City of Sanibel, even if such tower is only 200 to 250 feet.

6. Sunshine submits that the Sanibel permittee has not proven that there are NO sites available from which to serve Sanibel. Sunshine urges the Commission to be extremely cautious in granting waiver's of its rules on removing a community's only local transmission service, especially where:

(1) there is strong financial incentive for the petitioner to state that there are no sites available as in a case of moving from an island to the mainland; and

(2) where the original allocation was made because of the "remoteness" of the community (an island) and now the allocation is being moved to the mainland.

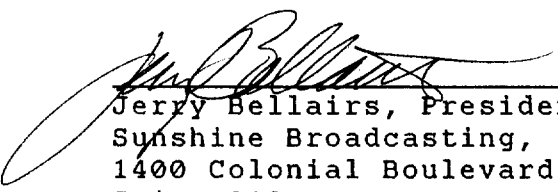
FM Channel Assignments, 52 RR 2d 571, Released August 9, 1982.

7. The Commission should not allow Section 1.420(i) of its Rules to become a loophole through which applicants propose to serve small, remote communities and then, by alleging that there are no transmitter sites available, move their allocation much closer to a metropolitan center.

8. As the Notice states,
"Petitioner seeks to invoke the provisions of Section 1.420(1) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest...the Commission prohibits the removal of a community's sole local transmission service except 'in rare circumstances ...' (which) Petitioner claims...is warranted here."

The obverse of Petitioner's argument is that, if the waiver is not warranted here--because sites to serve Sanibel are in fact available--then, Petitioner's request must be opened to other expressions of interest. Before the Commission decides to modify Petitioner's construction permit, it should allow competing expressions of interest from any applicants who are able to find a transmitter site from which to serve Sanibel. If there are no such sites, Petitioner has nothing to lose.

Respectfully submitted,



Jerry Bellairs, President
Sunshine Broadcasting, Inc.
1400 Colonial Boulevard
Suite 210
Fort Myers, FL 33907

March 18, 1992

CERTIFICATE OF SERVICE

I, Christine Harvel, do hereby certify that I have, this 18th day of March, 1992, caused to be sent by first class United States mail, postage prepaid, copies of the foregoing "Comments of Sunshine Broadcasting, Inc." to the following:

David G. O'Neil
Haley, Bader & Potts
2000 M Street N.W., Suite 600
Washington, DC 20036-3374

JAMES M. JOHNSON & ASSOCIATES
3750 US 27 NORTH SEBRING FL 33870

WRWX, SANIBEL, FLORIDA
C.P. SITE

| | | | |
|------------------------------------|--|------------------------|-----------------|
| REFERENCE | | CLASS A | DISPLAY DATES |
| 26 32 01 N | | | DATA 02-26-92 |
| 82 04 50 W | | Current rules spacings | SEARCH 03-18-92 |
| ----- CHANNEL 253 - 98.5 MHz ----- | | | |

| CALL | CH# | CITY | STATE | BEAR' | D-KM | R-KM | MARGIN |
|--------|-------|-----------------|-------|-------|--------|-------|-----------|
| WRWX.C | 253A | Sanibel | FL | 0.0 | 0.00 | 115.0 | -115.00 * |
| DE253 | 253A | Sanibel | FL | 0.0 | 0.00 | 115.0 | -115.00 * |
| AD253 | 253A | San Carlos Park | FL | 101.8 | 17.93 | 115.0 | -97.07 * |
| WOKDFM | 252C3 | Arcadia | FL | 3.7 | 82.96 | 89.0 | -6.04 * |
| ALOPEN | 252C3 | Arcadia | FL | 3.8 | 89.02 | 89.0 | 0.02 < |
| WOKDFM | 252A | Arcadia | FL | 10.3 | 73.19 | 72.0 | 1.19 < |
| AD255 | 255A | Murdock | FL | 344.9 | 43.63 | 31.0 | 12.63 |
| WKGR | 254C | Fort Pierce | FL | 68.8 | 180.34 | 165.0 | 15.34 |
| AD255 | 255A | Murdock | FL | 353.1 | 53.35 | 31.0 | 22.35 |
| WRTO.A | 252C | Goulds | FL | 124.3 | 195.31 | 165.0 | 30.31 |
| WRTO.C | 252C | Goulds | FL | 124.3 | 195.31 | 165.0 | 30.31 |
| WAYP.C | 254A | Holmes Beach | FL | 333.8 | 114.88 | 72.0 | 42.88 |